

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8918 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KASNABHAI G RATHOD

Versus

STATE OF GUJ

Appearance:

MR JT TRIVEDI for Petitioner No. 1
MR HIMANSHU TRIVEDI for Petitioner No. 1
MR BJ TRIVEDI for Petitioner No. 1
Mr. B.Y.Mankad, ASSTT. GOVERNMENT PLEADER for
Respondent Nos. 1 and 2.
RULE SERVED for Respondents No. 2,4-5
NILKANTHROY TRIVEDI for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 21/12/2001

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the orders at Annexures "E" and "H" to the petition.

2. The land of survey no. 201 of village Varvada, Ta: Dahod, Dist: Panchmahals admeasuring H 1-34.56 acres equivalent to 3 Acres and 13 gunthas was running in the name of the petitioner and his deceased brother Vasna Guliyabhai. After the death of the petitioner's brotehr, the name of his widow Bai Mani, respondent no. 4 and Bai Vesti, daughter of deeased Vasnabhai (respondent no. 5) were entered in the village record. The respondent no. 5 married and lived in village Gadoi of Dahod taluka of Panchmahals district. The said land was cultiated only by the petitioner. His name was shown in the village record 7/12 forms for the last many years. An application dated 6.8.1982 was moved to the Mamlatdar by the respsndent no. 3 stating therein that he had purchased the land admeasuring 2 acres out of the land of survey no. 201 from respondent nos. 4 and 5. He was in possession thereof as the purchaser of the land by a registered sale deed dated 5.2.1981. Proceedings were initiated before respondent no. 2 on the basis of this application and notices were issued on 9.1.1984. Though the name of the petitioner was in the village record form nos. 7 and 12, no notice was issued by the respondent no. 2 to the petitioner. The petitioner was not aware of the proceedings before respondent no. 2 and hence he could not participate. The respondent no. 2 passed the order dated 21st January, 1984 wherein the names of respondent nos. 4 and 5 were directed to be deleted and the name of respondent no. 3 was directed to be entered in the land record. The petitioner preferred an appeal being appeal no. 18 of 1985 before the Collector, Panchmahals district who allowed the appeal and held that though permission had not been granted and the application for the purpose of sale was rejected, it was placed before respondent no. 3. In the application, it was mentioned that a registered sale deed was executed and sale has taken place between two Adivasis by a Kachha agreement prior to 1.2.1981 in which the order at Annexure "E" was passed by the respondent no. 2. Against the order passed by the Collector, a Revision Application was preferred by the respondent no. 2 before Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat. The present petitioner was not made a party to the said proceedings before Additional Chief Secretary (Appeals), Revenue Department. In the Revision Application, the petitioner moved an application before Additional Chief

Secretary (Revenue) for impleading as a party in the Revision. Still however, the petitioner was not heard and the petitioner was not given an opportunity of hearing before Additional Chief Secretary (Appeals), Revenue Department. The Additional Chief Secretary (Appeals), Revenue Department has dismissed the Revision Application by his order dated 16.2.1990 and the order of the Collector has been set aside as per the operative portion of the judgment. One Review application was also filed before the Additional Chief Secretary (Appeals), Revenue Department and that Review application has also been dismissed. Hence the petitioner has filed the present petition.

2. Heard the learned counsel for the parties. The contention of the learned counsel for the petitioner is that the petitioner was not made a party either before Deputy Collector or in the appeal filed before the Collector. The Collector allowed the appeal against which Revision Application was preferred before Additional Chief Secretary (Appeals), Revenue Department. The petitioner was not impleaded as a party though the petitioner sent an application by registered post to the Additional Chief Secretary. Neither that application has been allowed nor rejected and the order passed by the Collector has been reversed by the Additional Chief Secretary (Appeals), Revenue Department without giving an opportunity of hearing to the petitioner. Though the petitioner filed an appeal before the Collector and that appeal was allowed and against the order of the Collector, Revision application was also filed before the Additional Chief Secretary (Appeals). In the Revision application, the petitioner was not impleaded as a party and the Additional Chief Secretary has set aside the order passed in the appeal without giving an opportunity of hearing to the petitioner. As such, the order passed by the Additional Chief Secretary (Appeals), Revenue Department is not sustainable in the eye of law as it has been passed in violation of principles of natural justice and without giving an opportunity of hearing to the petitioner.

3. I have carefully considered the contentions raised by the learned counsel for the parties. It appears that the appeal was filed by the petitioner before the Collector was allowed and against that appeal, a Revision application was filed before the Additional Chief Secretary (Appeals) and in that Revision Application, the petitioner was not made a party though it is stated that the petitioner sent an application for impleadment as a party in the revisional proceedings.

But the petitioner has not heard anything from the revisional authority as to whether he was made a party or not and whether any notice was received by the petitioner regarding the proceedings before revisional authority. In case, the petitioner was not made a party before the revisional authority and the order has been passed against the petitioner which is illegal and in violation of principles of natural justice and without giving an opportunity of being heard as the order passed by the Collector in appeal which was filed by the petitioner has been set aside. As such, the petitioner was a necessary party to be impleaded in the revision application. In the facts and circumstances, the order passed by the revisional authority, i.e. Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat deserves to be set aside and the matter is required to be remanded to the revisional authority for reconsideration after issuance of notice to the petitioner.

4. Accordingly, this petition is allowed.

The order dated 16.2.1990 passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat in Revision No. SRD/Land/97/86 and the order dated 21.1.1984 passed by the Deputy Collector, Tribal Sub plan, No. LND 6, Dahod are hereby quashed and set aside. The matter is remanded to the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad with a direction that he will direct the respondents to implead the petitioner as a party-respondent and decide the matter in accordance with law after giving an opportunity of hearing to the parties within a period of six months from the date of receipt of writ of this court. Rule made absolute accordingly with no order as to costs.

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